

Advisory Opinion

IECDB AO 2008-08

May 5, 2008

Richard J. Scieszinski
West Des Moines City Attorney
Email: richard.scieszinski@wmd-ia.com

Dear Mr. Scieszinski:

This opinion is in response to your letters of May 5, 2008, and May 6, 2008, requesting an opinion from the Iowa Ethics and Campaign Disclosure Board pursuant to Iowa Code section 68B.32A(11) and Board rule 351—1.2. We note at the outset that the Board's jurisdiction is limited to the application of Iowa Code chapters 68A and 68B, Iowa Code section 8.7, and rules in Iowa Administrative Code chapter 351. Advice in a Board opinion, if followed, constitutes a defense to a subsequent complaint based on the same facts and circumstances.

FACTUAL STATEMENT:

You advise us that the individual who does not serve in a management position with the city water department wants to run for city council. The water department operates under the authority of a separate board of trustees, but the employees are covered by the same health and insurance plans as other city employees. The city council does approve mayoral appointments to the board of trustees.

QUESTIONS:

1. Is it permissible for an individual to serve on a city council and be employed by the water department of the same city?
2. Is the individual permitted to vote on issues such as health care insurance?

OPINION:

Our jurisdiction in administering Chapter 68B to political subdivisions is advisory only. Under Iowa Code section 68B.32A(11) local government personnel may obtain an advisory opinion concerning the application of the chapter and if they follow the advice it is a defense to a complaint. However, complaints alleging violations of the chapter by local government personnel are filed with the appropriate county attorney. ¹

Nothing in the ethics laws in Iowa Code chapter 68B expressly prohibits a member of a city council from also being employed by the city 's water department. Iowa Code section 68B.2A does prohibit governmental officials and employees from engaging in any "outside employment or activity which is in conflict" with their "official duties and responsibilities." The Board has consistently held that "outside employment" encompasses being employed by another governmental entity. Thus, there can be a conflict of interest when an individual serves on a city council and is employed by the city's water department.

Iowa Code section 68B.2A sets out three "situations in which an unacceptable conflict shall be deemed to exist." We summarize each situation and how they apply to your questions below:

1. The outside employment or activity involves the use of government resources. Therefore, the individual could not use resources of one governmental entity to do work for the other governmental entity. For example, time spent at the city's water department could not be used to engage in city council business.
2. The outside employment or activity involves the receipt of compensation for the performance of any act that the person would be required or expected to perform as part of the person's regular duties or during the hours of service or work. We do not believe that this prohibition is applicable to your question.
3. The outside employment or activity is subject to the official control, inspection, review, audit, or enforcement authority of the person during the performance of official duties. The individual is required to publicly disclose the conflict and abstain from taking any actions as a member of the city council on issues involving the water department, including approving appointments to the water board, that came before the city council. ²

We believe that voting on direct benefits such as health care benefits and life insurance would be an impermissible conflict under the statute. Thus, the individual would be required to abstain from voting on those types of employment issues impacting the individual's work or compensation at the water department.

Thus, so long as the individual did not engage in any conduct that leads to a conflict of interest under Iowa Code section 68B.2A and as set out herein, nothing in the ethics laws of Iowa Code chapter 68B prohibits the situation you describe.

BY DIRECTION AND VOTE OF THE BOARD

James Albert, Board Chair
Janet Carl, Vice Chair
Gerald Sullivan
Betsy Roe
John Walsh
Patricia Harper

Submitted by: W. Charles Smithson, Board Legal Counsel

¹ See Iowa Code sections 68B.26 and 68B.32B(1). We do note that complaints alleging violations of Chapter 68B by local officials and local employees involving the lobbying laws are subject to the applicable jurisdictions of the House and Senate Ethics Committees (legislative lobbying) and the Board (executive branch lobbying) under Iowa Code sections 68B.31, 68B.32(1), and 68B.32A(12).

² See Iowa Code section 68B.2A(2)“b” that sets out the parameters for public disclosure and abstaining from action.